

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION

FILED
ASHEVILLE, NC

MAR - 5 2013

U.S. DISTRICT COURT
WESTERN DISTRICT OF NC

ALT BIOSCIENCE, LLC d/b/a PDX
BIOTECH,

Plaintiff,

v.

KACEY MED-VET, INC. d/b/a KACEY INC.
and KACEY DIAGNOSTICS, RICHARD
CARSILLO, SCI-TEK, LLC and JAMES
SUTOR,

Defendants.

Case No. 1:13-CV-13

CONSENT JUDGMENT

Plaintiff, ALT BioScience, LLC d/b/a PDx BioTech, and Defendants, Kacey Med-Vet, Inc. d/b/a Kacey Inc. and Kacey Diagnostics, Richard Carsillo, Sci-Tek, LLC and James Sutor (collectively, "Defendants"), having resolved their differences regarding the claims in the instant action in a Settlement Agreement dated 2/7, 2013, and desiring to have this action completely and finally terminated, have agreed to entry of a judgment in the form set forth herein, and the Court being fully advised, state the following:

WHEREAS, Plaintiff ALT BioScience, LLC d/b/a PDx BioTech ("PDx") is a limited liability company organized under the laws of the State of Kentucky, with its principal place of business at 315 South Broadway, Suite 100, Lexington, Kentucky 40508. PDx is in the business of developing, manufacturing, selling and distributing, in this District and throughout the U.S., diagnostic products for oral healthcare in humans and pets, including "OraStrip" brand diagnostic products for the oral detection and monitoring of periodontal disease in dogs.

WHEREAS, Defendant Kacey Med-Vet, Inc. d/b/a Kacey Inc. and Kacey Diagnostics

("Kacey") is a corporation organized under the laws of the State of Florida, with a principal place of business at 2588 Bearwallow Mountain Road, Hendersonville, North Carolina 28792. Kacey is in the business of developing, manufacturing, selling and distributing medical diagnostic products for veterinary use, including the "Oral-Stx" and/or "Veti-Dental Stx" brand diagnostic products or similar products for oral detection of periodontal disease in dogs and cats.

WHEREAS, Defendant Richard Carsillo ("Carsillo") is domiciled in North Carolina and resides at 2588 Bearwallow Mountain Road, Hendersonville, North Carolina 28792. Carsillo is the owner, President and Chief Executive Officer of Kacey, and has total authority and exercises total control over the finances, policies and business practices of Kacey.

WHEREAS, Defendant Sci-Tek, LLC ("Sci-Tek") is a limited liability company organized under the laws of the State of Indiana, with its principal place of business at 8889 Hague Road, Indianapolis, Indiana 46256. Sci-Tek is in the business of developing, manufacturing, selling and distributing medical diagnostic products for veterinary use, including engaging in a joint venture with Defendants Kacey and Carsillo to develop, manufacture, sell and distribute the "Oral-Stx" and/or "Veti-Dental Stx" brand diagnostic products or similar products.

WHEREAS, Defendant James Sutor ("Sutor") is domiciled in Indiana and resides at 287 Meander Way, Greenwood, Indiana 46142. Sutor is the owner and sole Member of Sci-Tek, LLC, and has total authority and exercises total control over the finances, policies and business practices of Sci-Tek.

WHEREAS, Plaintiff PDx is the owner of U.S. Patent No. 8,337,774 ("the '774 patent") entitled "Compositions For Simultaneous Detection Of Volatile Sulfur Compounds And Polyamines". The '774 patent was duly and legally issued by the United States Patent and Trademark Office on December 25, 2012. The claims of the '774 patent are generally directed to

a chromogenic assay for the presence of volatile sulfur compounds, which are an indicator of pathogenic organisms, including periodontal disease.

WHEREAS, PDx alleges that manufacturing and/or sale of Defendants' "Oral-Stx" and/or "Veti-Dental Stx" brand diagnostic products has or will, absent this injunction, cause irreparable harm to PDx's rights under the '774 patent; and that the nature of such rights renders inadequate all remedies available at law. Said allegations being denied by the Defendants.

WHEREAS, on January 17, 2013, PDx filed its Complaint in this action for infringement of the '774 patent.

WHEREAS, on January 17, 2013, PDx notified Kacey and Carsillo that Defendants' "Oral-Stx" and/or "Veti-Dental Stx" brand diagnostic products infringed PDx's '774 patent, and provided Kacey and Carsillo with a copy of the Complaint.

WHEREAS, on January 18, 2013, PDx notified Defendants Sci-Tek and Sutor that Defendants' "Oral-Stx" and/or "Veti-Dental Stx" brand diagnostic products infringed PDx's '774 patent, and provided Sci-Tek and Sutor with a copy of the Complaint.

WHEREAS, since receiving notice of their infringement of PDx's '774 patent, Defendants represent that they have not marketed, sold or distributed the "Oral-Stx" and/or "Veti-Dental Stx" brand diagnostic products or similar products.

WHEREAS, Defendants Kacey, Carsillo, Sci-Tek and Sutor each expressly acknowledge that PDx's '774 patent is valid and enforceable and also each agree not to challenge, or to assist others in challenging, the validity or enforceability of PDx's '774 patent.

WHEREAS, PDx is entitled by virtue of its ownership of the '774 patent to enforce the rights therein, and Defendants are not entitled to infringe on the '774 patent.

WHEREAS, the harm to PDx caused by Defendants' infringement of the '774 patent is

great and far exceeds any harm to Defendants caused by the entry of this injunction.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT

1. The Court incorporates by reference the foregoing facts and conclusions into this Order.
2. The Court has jurisdiction over the subject matter of this action, personal jurisdiction over the Defendants Kacey, Carsillo, Sci-Tek and Sutor, and venue is proper as to the parties.
3. As to Defendants, the '774 patent is adjudged and decreed valid and enforceable, and Defendants will not challenge, or assist others in challenging, now or in the future, whether in this or in any other forum or venue, the validity and/or enforceability of the '774 patent or in any manner argue or assert that the '774 patent is in any way invalid or unenforceable.
4. Defendants, their officers, directors, agents, attorneys, servants, employees, successors, assigns, and all other persons in active concert or participation with Defendants, are hereby permanently enjoined forthwith from manufacturing, using, selling, offering to sell, distributing, shipping, marketing and/or advertising, or assisting any other person in the manufacturing, using, selling, offering to sell, distributing, shipping, marketing and/or advertising: (a) any product that infringes the '774 patent, including, but not limited to, the "Oral-Stx" and/or "Veti-Dental Stx" brand diagnostic products (as shown in Exhibit A); and (b) any similar medical diagnostic product which competes or may compete directly or indirectly with Plaintiff's OraStrip product.
5. Except as set forth in this Consent Judgment, PDx's Complaint is hereby dismissed with prejudice.
6. The matter of damages having been compromised and settled, each party shall

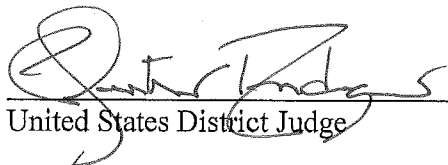
bear its own costs and fees in this action.

7. This Court shall retain jurisdiction of the parties and this dispute for the purpose of making any further orders necessary or proper for the interpretation, modification or enforcement of this judgment. Any party found by the Court to have violated this Consent Judgment shall be liable for, including, but not limited to, the other party's reasonable attorneys' fees, costs and damages incurred by reason of such violation and the enforcement of this Consent Judgment.

8. The parties waive their right to appeal from this Consent Judgment.

ENTERED:

Date: 3/4/2013


United States District Judge

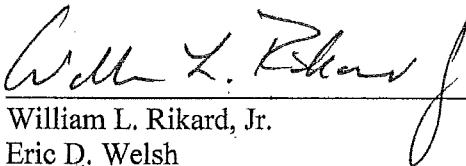
The parties and their counsel hereby agree to the entry of the foregoing Consent

Judgment:

ALT BIOSCIENCE LLC d/b/a PDX
BIOTECH

Russell Seter, CEO

Dated: _____

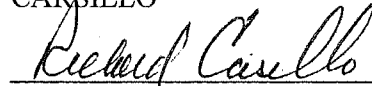


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KACEY MED-VET, INC. d/b/a KACEY INC.
and KACEY DIAGNOSTICS, and RICHARD
CARSILLO



Richard Carsillo, President and CEO

Dated: Feb 6th, 2013

SCI-TEK, LLC and JAMES SUTOR

James Sutor, Member

Dated: _____



Patrick U. Smathers

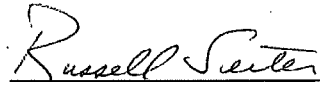
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Kacey Diagnostics, and Richard Carsillo

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ALT BIOSCIENCE LLC d/b/a PDX
BIOTECH



Russell Sexter, CEO

Dated: 2-7-13

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and KACEY DIAGNOSTICS, and RICHARD
CARSILLO

Richard Carsillo, President and CEO

Dated: _____

SCI-TEK, LLC and JAMES SUTOR

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and KACEY DIAGNOSTICS, and RICHARD
CARSILLO

Russell Selter, CEO

Richard Carsillo, President and CEO

Dated: _____

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SCI-TEK, LLC and JAMES SUTOR

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James Sutor
James Sutor, Member

Dated: 2-7-2013

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Kacey Diagnostics, and Richard Carsillo